IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/08/2002

CORAM

THE HON'BLE MR.JUSTICE P.SHANMUGAM
and
THE HON'BLE MR. JUSTICE K.SAMPATH

A.S.No.309 of 1995 and W.P.No.6579 of 1995
C.M.P.No.13465 of 1995 and W.M.P.No.10619 of 1995

A.PL. Meyyappa Chettiar ... Appellant in
Appeal and the
petitioner in
W.P.

-Vs-

1. The District Collector,
Sivagangai,
P.M.T. District.

2. District Revenue Officer,
Sivagangai,
P.M.T. District.

3. Sub-Collector of Devakottai,
Devakottai,
P.M.T. District.

4. Tahsildar,
Karaikudi Taluk,
P.M.T. District. ...Respondent Nos.
1 to 4 in W.P.

5. K.R.Narayanan Chettiar ...Respondent in
Appeal and Respondent No.5 in W.P.

Appeal against the judgement and decree dated 16.02.1995 made in O.s.No.38 of 1994 the file of the Court of the Sub Judge, Devakottai. Writ Petition filed under Article 226 of the Constitution of India praying for issue of writ of certiorarified mandamus as stated therein.

For Appellant/petitioner : Mr.P.L.Narayanan

For Respondents 1 to 4 in W.P. : Mr.M.E. Ravi Selvam
For Respondent in Appeal and R5 in WP. : Mr. AR.L.Sundaresan

:COMMON JUDGEMENT

P.SHANMUGAM, J.
The appeal as well as the writ petition are taken together for consideration. The suit in O.S.No.38 of 1994 on the file of the Court of the Subordinate Judge, Devakottai, was filed for declaration and permanent injunction by appellant in the appeal. The suit was dismissed with cost. The appeal is against this judgement and decree. He has also filed the writ petition under Article 226 of the Constitution of India praying for issue of writ of certiorarified mandamus to set aside the order of the District Revenue Officer, Sivagangai, dated 10.06 .1994 confirming the order of the Sub Collector of Devakottai dated 3 0.1.1994 and consequently to direct the respondents therein to restore the name of the writ petitioner in the `A'

register of the fourth respondent therein, namely, the Tahsildar, Karaikudi Taluk, in respect of the land in S.No.27/5 measuring 1.07 acres, at Kottaiyur Village, Karaikudi Taluk.

2. The facts of the case are as follows:-

The parties are referred to as per their ranking in the suit.
According to the plaintiff, the suit property in S.No.27/5 of Kottaiyur Village, K. Velangudi Group, Karaikudi Taluk, of an extent of 1.07 acres was purchased by the father of the plaintiff by a registered sale deed dated 01.05.1929 for a consideration of Rs.10,000/- from M/s. V. CT. Chockalingam Chettiar, VR. Chockalingam Chettiar, PR.P. Vairavan Chettiar, the trustees of Shree Kandeeswaramudaiyan Devasthanam, and ever since, they had been in possession and enjoyment of the property by paying revenue and kist. Their names have been entered in the patta passbook and adangal. It is his further case that while the suit property was covered on three sides by a compound wall, they have grown trees, plants and have been enjoying and in possession of the land without hindrance from anybody. While so, when the plaintiff was out of India, an erroneous entry was made in the `A' Register of the Revenue Department in the name of one K. Govindan Chettiar in the place of the plaintiff. He came to know of this, when he went to pay the kist and immediately thereafter, he applied for removal of the name of K. Govindan Chettiar from the said register. The Tahsildar, considering his possession, right and title, found that erroneous entry has been made in the name of K.Govindan Chettiar and ordered restoration of the same to the petitioner's name as evidenced by Ex.A.4 (1971). Six years thereafter, the defendant along with his brother K. Ramanathan Chettiar conveyed 7 cents of land adjoining the suit property herein by a registered sale deed dated 27.07.1979, describing thereunder that the suit property belongs to the plaintiff. However, after fourteen years, the defendant invoked the jurisdiction of the Sub Collector, Devakottai, for an appeal dated 01.09.1993 against the transfer of the entry in `A' Register in the petitioner's name made by the Tahsildar on 05.03.1971. The Sub Collector, by order dated 30.01.199 4 restored the entry in the name of K. Govindan Chettiar. The said order was confirmed by the District Revenue Officer by Ex.B.1 order in the appeal filed by the plaintiff. According to the plaintiff, the defendant who is a highly influential man and

has money and power, armed now with an illegal order, tried to unlawfully interfere with the possession and enjoyment of the plaintiff, thereby driving the plaintiff to institute the suit for declaration and permanent injunction. He had also filed the Writ Petition No.6579 of 1995 against the order of the District Revenue Officer confirming the order of the Sub Collector and for the consequential restoration of the plaintiff's name in the register.

3. The case of the defendant, who is the 5th respondent in the writ petition, is that the suit property is their ancestral property and that they had been in enjoyment of the same by obtaining patta and paying the revenue to the Government. As the defendant and his brothers were working abroad, patta granted by the Settlement Officer was wrongly transferred to the name of the plaintiff taking advantage of their absence, but however, on his appeal, the Sub Collector allowed the same and the revision filed by the plaintiff was dismissed confirming the transfer of the entry in the name of K. Govindan Chettiar. He also claims that they had been enjoying the suit property by enclosing compound wall with gate, digging a well and that they have also acquired title by adverse possession. According to him, he recently came to know that there are interpolations in Ex.A.13 and therefore, the same would not bind the defendant and the description of the property is incorrect and therefore, the suit and the writ petition are liable to be dismissed.

4. On the pleadings, the learned Subordinate Judge, Devakottai, framed the following five issues:-
(i) Whether the plaint schedule property belongs to the plaintiff?
(ii) Whether the defendant is interfering with the enjoyment of the plaintiff?
(iii) Whether the plaintiff is entitled for declaration and permanent

injunction as prayed for?
(iv) Whether the suit is maintainable?
(v) To what relief, the plaintiff is entitled?

5. The learned Subordinate Judge permitted marking of Exs.A.1 to A.2 8 documents on behalf of the plaintiff, and Exs.B.1 to B.7 documents on behalf of the defendant. P.Ws.1 to 4 were examined on behalf of the plaintiff, and D.Ws.1 to 4 were examined on behalf of the defendant. The Advocate Commissioner has submitted his report Ex.C.1 and plan Ex.C.2. After considering the oral and documentary evidence, the learned Subordinate Judge found that the plaintiff has not established that the suit property belonged to his ancestors on Issue No.1, that the defendant is not interfering with the enjoyment of the plaintiff on Issue No.2 and that the plaintiff cannot exclusively claim title to the suit property and that the suit is not maintainable for non-joinder of the necessary parties on Issue Nos.3 and 4. The suit was ultimately dismissed with cost. The appeal is against that judgement and decree.

6. Coming to the writ petition, we find from the typed set of papers that the defendant KR.Narayanan Chettiar had made a representation dated 01.09.1993 to the third respondent therein, viz., the Sub Collector,

Devakottai, stating that the name of the plaintiff had been wrongly entered in the Village Accounts and he came to know of that when he tried to pay the kist for the property, and that since he was working outside the country, the transfer of patta was not brought to his notice, and therefore, he prayed for an enquiry and appropriate orders. On this application, after considering the objection of the plaintiff dated 11.10.1993, the Sub Collector, Devakottai, found that the plaintiff had not produced any records to show that the property was obtained from K. Govindan Chettiar and therefore, the transfer in the name of the plaintiff was to be cancelled. The defendant was also directed to get the transfer of patta after producing a Certificate to the effect that they are the legal heirs of K. Govindan Chettiar. Ultimately, the name of K. Govindan Chettiar was directed to be entered in reference to the S.No.27/5 of an extent of 1.07 acres. On appeal, the District Revenue Officer, in his impugned order dated 10.0 6.1994, while confirming the order of the Sub Collector, found that the plaintiff has failed to identity of the property in reference to the sale deed, that the plaintiff had not established his title to the property and that there was no explanation as to why the petitioner/plaintiff could not get consent from the settlement pattadar, namely, K. Govindan Chettiar. In other words, both the Revenue Authorities proceeded on the basis that K. Govindan Chettiar is pattadar and that the petitioner/plaintiff has not established his independent title. The writ petition is against the order of the District Revenue Officer confirming the order of the Sub Collector.

7. According to the plaintiff/writ petitioner, there is total nonapplication of mind and the order impugned has been passed without reference to the valid title established by two registered sale deeds of the years 1929 and 1979, namely, Ex.A.1 and Ex.A.13. According to the plaintiff/writ petitioner, the authorities have misdirected themselves both legally and factually, inasmuch as K. Govindan Chettiar has no right or title or interest in the property, and without considering that the entry in the name of K. Govindan Chettiar in `A' Register is nothing, but a mistake. The plaintiff/writ petitioner has also pleaded mala fides against the second respondent.

8. The Counsel appearing on behalf of the fifth respondent in the writ petition who is the defendant in the suit justifies the orders of the revenue authorities and the learned Government Pleader submits that the orders were passed on the basis of the records available.

9. We have heard the Counsel appearing on either parties elaborately and considered the matter carefully.

10. The main question that arises for consideration is whether the plaintiff has established his title to the suit property, so as to seek the relief of declaration and permanent injunction, and whether the order of the revenue authorities are justifiable?.

11. Before going into the question, the controversy in reference to

the suit property, viz., whether the suit property is identified and co-related to the sale deeds Exs.A.1 and A.13, has to be resolved.

(i) As per the description in the plaint schedule of property, the suit property is of an extent of 1.07 acres in S.No.27/5 in Patta No.57 of the Kottaiyur Village, K.Velangudi Group, Karaikudi Taluk, Pasumpon Muthuramalinga Thevar District. The four boundaries set out in the schedule of property are:

East by north-south third street;
South by the Serkattan Urani Tenkarai, the vacant the vacant property belonging to the Shree Kandeeswaramudaiyan Devasthana Trustees and the east-west street;
West by N.K. Annamalai Chettiar's house and wall and AL.CT.Alagappa Chettiar's Banglow;
North by plaintiff's father A.PL. Palaniappa Chettiar's Bungalow, AK.RM.K.RM. Karuppan Chettiar's vacant land, the property agreed to be purchased from Kathamuthu Pillai, by A.PL.Palaniappa Chettiar and A.PL.Palaniappa Chettiar's buildings and land;

In between them, 2-1/2 "Manai" of vacant land of 60 "Thatchumulan" from east-west and 100 "Thatchumulam" from north-south bounded by compound wall on three sides consisting of building, well including trees.

(ii) The descriptions as found in Ex.A.1 sale deed dated 12.05.1929, by which the plaintiff's father A.PL. Palaniappa Chettiar purchased the property from M/s. S.CT.K.Chockalingam Chettiar, PR.Veera Chockalingam Chettiar and PR.P. Vairavan Chettiar, the trustees of Sree Kandeeswaramudayar Devasthanam, are as follows:-

East by north-south third street;
South by Sokkattan Urani Tenkarai, the vendor's vacant land and east-west road;
West by the house and wall of N.K.Annamalai Chettiar and the house and wall of AL.CT.Alagappa Chettiar;
North by the purchaser's property, AK.RM.K.RM. Karuppan Chettiar's vacant land, the land proposed to be purchased by the purchaser from M.Kathamuthu Pillai, and the vacant land and buildings belonging to the purchaser;
In between these properties, in 2-1/2 "Manai" of 60 "Tatchumulam" from east to west and 100 "Tatchumulam" from north to south bounded on three sides with building at Solaimudiyenthal Village, Selangudi Ulkadai, Karaikudi Sub Division, Ramanathapuram Division.

(iii) A Commissioner was appointed to inspect the suit property and note down the physical features of the suit property, and the description of the property as given in the plaint schedule was given in the Interlocutory Application for appointment of the Commissioner. The Commissioner has submitted a report Ex.C.1 and a plan Ex.C.2. The Commissioner has stated in his report that "ABCD" is the suit property and the property was bounded by compound wall on four sides. He has stated that there is a main gate at the Raman Street, that inside the suit property, there are different types of trees, like, Mango, Neem, Coconut, Palmirah, Jackfruit, etc., that there is a well on the north-eastern corner of the property, that there is a tiled shed with an oven, and firewood had been gathered near the oven, and that adjoining

to that shed, there is a large tank with platform, bathroom and lavatory. The plaintiff claims that these form part of his house. In paragraph 7 of the Commissioner's report, it is noted that there are three granite platforms, and in one of them, it is inscribed as the gift of A.PL.Meenakshi Achi with date as 19.07.1954 equivalent to 4th, Adi month, Bava year. The report has also noted the claims of both the plaintiff as well as the defendant. A rough plan, the description of boundaries as gathered from Exs.A.1, A.13, C.1, C.2 and A.24 is as follows:-

Cghokkattan Urani
and vacant land
A North D

Na.Ka.Annamalai

Chettiar
West

Raman St.--- --- AL.CT.Alagappan
(III Street Chettiar East)

East

B/////// South //////// C
//////// ////////
//////// ////////
| | |
Plain- Defen- Plain-
tiff's dant's tiff's
house. plot house
sold
under
Ex.A.13.

12. A combined reading of the schedule of property described in the plaint and the Commissioner's report as well as Ex.A.1, we find that there is no difficulty in identifying the suit property. Besides, we find from Ex.A.13, the sale deed executed by the defendant along with his brother K.R.Ramanathan Chettiar in favour of the plaintiff, that the sale deed was in reference to 7 cent s of the land. The boundaries as recited in the schedule to Ex.A.13 for the 7 cents of land are :
West by the plaintiff's property;
North by C.A.C. Lakshmanan Chettiar and others house;
East by A.PL..Meenakshi Achi's house (Plaintiff's mother)
South by RM.AN.St. and others' bunglow and the plaintiff's land;
In other words, in this description, seven cents of land is situate on either side of the properties belonging to the plaintiff, i.e., on the east side the property belonging to the plaintiff's mother and in the western and

southern sides the properties belonging to the plaintiff.

13. Ex.A.24 is the Field Plan of the Velangudi Village, which clearly shows that the sub division of 7 cents, namely, 27/17 and the house property of the plaintiff as 27/16 and the plaintiff's mother as 27 /18.

14. The defendant as D.W.1 has admitted in his cross examination that the opening of the door to the backyard of the plaintiff's house will lead to the suit property and the suit property is surrounded by a compound wall but it was put up by K.Govindan Chettiar. Even in Ex.A.1 sale deed of the year 1929, there is a reference to the compound wall on three sides, and in the schedule of property in the plaint, there is a reference to the well. The Commissioner's report confirmed the existence of the compound wall on three sides. As per the evidence of D.W.1 and Ex.A.24, the Village Field Map, it is seen that the property is bounded on north, east, west and on the southern side by the wall extended and covered by the plaintiff's property and only 7 cents of land that was left had been subsequently purchased under Ex.A.13 by the plaintiff himself. There is a main gate on the Raman Street, which was originally called Third Street running on northsouth. The main gate of the street was intended to take heavy vehicle inside the vacant land for carrying red sand, manure, etc., and the existence of bath room, lavatory, oven and the sitting platforms with the plaintiff's mother's name would also show that the suit property is attached to the plaintiff's house and accessible from south and it had been in use of the plaintiff.

15. By going through these documentary and oral evidence, we do not find any difficulty in identifying the suit property in reference to the extent and its boundary. Excepting the change of name of the street by the passage of time and minor changes effected over the boundaries, everything tallies. Therefore, the suit property is the same as found in Exs.A.1, A.13 and A.24 and the property has been properly identified by the Advocate Commissioner also. The contrary finding of the learned Subordinate Judge in para 15 and the revenue authorities in this respect are unsustainable. However after all this, in Paragraph 17 of the judgement, the learned Subordinate Judge held that description in Ex.A.1 sale deed is co-related to the plaint schedule property and the contention of the defendant cannot be accepted.

TITLE TO THE PROPERTY:

16. The plaintiff claims title by virtue of registered sale deeds Ex.A.1 dated 12.05.1929 and Ex.A.13 dated 27.07.1979. The plaintiff further states that he has paid kist in his name as per Ex.A.2 dated 0 3.12.1964 for fasli years 1368 to 1374. Ex.A.3 evidencing the kist receipt for fasli years 1375 to 1380 dated 06.02.1971 in the name of the plaintiff for S.No.27/5 for patta No.191. Ex.A.5 evidencing kist receipt for the patta No.191 for fasli years 1381 and 1382 dated 04.04 .1973. In Ex.A.6 dated 12.04.1976 and Ex.A.7 patta book for S.No.27/5 in the name of the plaintiff, payment of revenue kist of fasli years 1383 to 1385 and 1386 to 1387 and 1391 to 1399 were entered. Exs.A.8 to A.12 are the kist receipts in the name of the plaintiff for the period 1982 to 1993. From the above documents, it is seen that the plaintiff traced his title to the suit property by virtue of Exs.A.1 and A.13 sale deeds

and payment of kist upto the year 1993 from 1964. Ex.A.13 sale deed is executed by the defendant along with his brother in favour of the plaintiff in reference to the seven cents of the land which forms part of the larger extent of Ex.A.1 property, namely, 1.07 acres. As contended by the learned Counsel appearing for the appellant/plaintiff that the plaintiff has purchased this property for the convenient enjoyment of the whole extent of property comprised of land and house in Survey No.27/5 including the seven cents of land in S.No.27/17. As a matter of fact, Ex.A.1 also refers to the vacant land of Karuppan Chettiar on the north and Ex.A.13 refers to the plaintiff's property both on the east, west and south. The defendant is clearly estopped from questioning the title of the plaintiff to the suit property, inasmuch as in Ex.A.13, the defendant himself has described the suit property as plaintiff's property. He has referred to as ..."j';fs; tPl;Lf;F nkw;F / / / j';fs; ,lj;jpw;Fk; bjw;F"...of these seven cents. By the sale of these seven cents to the plaintiff, who has already got 1.07 acres of land and house in that survey number, by this description, the defendant has acknowledged the ownership of the plaintiff over the property as ..."j';fs; ,lj;jpw;Fk; bjw;F"...

17. The contention of the Counsel for the respondent/defendant is that Ex.A.1 sale deed refers to as cowl, which can only mean a lease of the property and not the sale. We do not find any substance in such contention. As per P.Ramanathan Aiyar's Law Lexicon, the expression "cowl" may be used for other transactions also. That apart, the expression is not a mere cowl, but it is a sasuvetha cowl. Ex.A.1 further says as follows:-

..."ehsJ njjpapy; eh';fs; buhf;fkha; bgw;Wf; bfhz;L tpl;l goapdhny moapy; fz;l brhj;jpy; jh';fs; j';fspc&;lg;gpufhuk; fl;olk; Kjypaitfs; fl;of; bfhz;Lk; g[j;jpu bgsj;jpu re;jjp ghuk;giuaha[k; jhdhjp tpdpka tpw;fpua';fSf;F nahf;fpakha[k; Fr;re;jpuhh; f!;jhapa[k; rh;t Rje;jpu ,Uthu ghj;jpa';fSld; Mz;lDgtpj;J bfhs;s ntz;oa J/"...

It also says,

..."nkny fz;l c&uj;Jg;go jh';fSk; j';fs; thhpRfSk; j';fs; ghj; jpaijia milfpwth;fSk; thp brYj;jp Mz;lDgtpj;Jf; bfhs;s ntz;oaJ/"...

In the description of the property, it further says,

..."rfy tpj ghj;jpa';fSk; j';fSf;F rh!;tjf;ft[yhf bfhLj;jpUf;fpwJ/"

which literally translated would read as follows:- "the purchaser and his successor in interest with their succeeding generations to come for ever till the Sun and Moon shine enjoy the property absolutely with right of alienations, sale by putting up building etc., as per their wishes." As already pointed out that the consideration for this property was Rs.10,000/- in the year 1929, which according to the Counsel appearing for the appellant/plaintiff would amount to a minimum One Crore of rupees in the present market value, has much force and they could not have simply obtained a lease for such a huge consideration. The recital that the property shall be enjoyed for ever with the right of succession with all the interest and title stated in more than one place, gives no room for doubt that the property conveyed is a transfer by way of sale and not lease as contended. In Ex.A.13, another sale deed executed by the defendant along with his brother in favour of the plaintiff, the description of the property therein confirms the sale already taken place in the year 1929. In the light of this, it is not possible to accept the contention that the plaintiff had not purchased the property.

18. Insofar as the payment of revenue receipts and records are concerned, Ex.A.4 dated 05.03.1971 shows that the name of the holder of patta No.191 has been transferred from K. Govindan Chettiar to the plaintiff. The case of the plaintiff is that he was away from India, that he came to know of the transfer of entry in favour of K. Govindan Chettiar's name to the patta No.191, when he went to pay the subsequent kist, and that on his objection that it is an erroneous and mistaken entry without notice to him, his name was restored and thereafter, ever since from 1971, the plaintiff had been paying kist receipt till the year 1993. After nearly 22 years on the objection raised by the defendant, the plaintiff submitted his counter statement dated 11.1 0.1993. The Sub Collector referred to the counter statement wherein the plaintiff has stated that there is a building at S.No.27/5 and that the said property and land belong to him ancestrally. However, the Sub Collector found that the plaintiff has not produced any records to show that how the property came to him from K. Govindan Chettiar and that he has not produced any document to show that he is the legal heir of the K. Govindan Chettiar, which is, in our view, total non-application of mind. The claim of the plaintiff was that the suit property ancestrally belonged to him and that there is building and payment of kist. Without reference to these documents and payment of kist from 1964 to 1971 and without explaining the inordinate delay of 22 years in seeking for correction on the part of the defendant, the Sub Collector, only on the ground that the plaintiff has not proved that he is the legal heir of K. Govindan Chettiar, has restored the name of K.Govindan Chettiar in S.No.27/5 of an extent of 1.07 acres. Admittedly, before the Sub Collector, there is no proof as to how K. Govindan Chettiar had obtained the prop erty or title deed in his favour or any orders either by the revenue court or by the authorities showing that this property belonged to K. Govindan Chettiar. In other words, there was absolutely no material whatsoever to show that the property belonged to K. Govindan Chettiar. The Sub Collector, had, disregarding the title and evidence furnished by the plaintiff, simply accepted the case of the Village Administrative Officer and transferred the entry from the name of the plaintiff to that of K.Govindan Chettiar. Before the appellate authority, namely, the District Revenue Officer, the plaintiff has specifically raised in his grounds that there is no record to show that the property belonged to K.Govindan Chettiar. He has specifically stated in ground Nos.10 and 11 that K.Govindan Chettiar has no connection whatsoever in the suit property and the correction was said to have been made on the mere alleged statement of a newly recruited Village Administrative Officer. It was further pointed out by the plaintiff that neither the defendant nor K. Govindan Chettiar has proved their title with records by producing sale deeds or revenue receipts to claim the patta in their name. It was also pointed out by the plaintiff that there is no connection between K. Govindan Chettiar and the defendant. The District Revenue Officer, in his order, without reference to the memorandum of grounds raised by the plaintiff and the documents relied by the plaintiff, has found that the appellant/plaintiff has not proved that the four boundaries in Ex.A.1 and the petition property are one and the same. He has also found that from the year 1929 to 1971, the plaintiff had not attempted to get patta in his name. According to him, the plaintiff has not objected to the transfer of patta to the name of K. Govindan Chettiar in the year 1960 settlement and no notice was given to K. Govindan Chettiar or his legal heirs when there was

correction in the entry by the Tahsildar dated 05.03.1971. He again committed an error by saying that he is unable to find out what is the difficulty in getting consent from the pattadar, namely, K. Govindan Chettiar. Thus, we find that both the authorities proceeded that K. Govindan Chettiar is the owner of the property and patta had once been entered in his name, since the claimants are not legal heirs of K. Govindan Chettiar, they could not get any entry in their name. This is in our view begging the question. The very entry in the name of K.Govindan Chettiar was seriously objected to as an erroneous entry. We had already found that the description of the property in Ex.A.1 as well as the suit property is one and the same and there is a finding in favour of the plaintiff by the learned Subordinate Judge. We also found that there is absolutely no ground to say that the suit property could not be identified, excepting the alleged entry made in Ex.B.2, wherein in column No.9, namely, the name of the registered owners, the name of K. Govindan Chettiar is shown. But, in column No.4, whether it is ryotwari or poromboke, the entry is shown as poromboke. Apart from this isolated stray sheet of paper said to be extracted from the rent register of the Village Description Register showing K.Govindan Chettiar as registered owner of the property, there is absolutely no material whatsoever to link K. Govindan Chettiar with the suit property. Even here the property which K.Govindan Chettiar claimed as his is shown to be "poromboke property", for which there is no explanation by defendant/respondent. It is clearly admitted that the defendant has no document or title to show that the property belonged to K.Govindan Chettiar. It has not been established or made clear as to how and on what basis, the name of K.Govindan Chettiar has been entered in the rent register.

19. Though the learned Counsel appearing for the respondent/ defendant attempted to argue that the name of K.Govindan Chettiar was entered after enquiry under the Estate Abolition Act (Act No.26/48), no document or proceeding issued under the said Act in favour of K. Govindan Chettiar or in favour of the defendant has been furnished or attempted to be furnished. If really, there was any proceeding by which the estate has been notified and the suit property has been taken over and vested with the Government and that K.Govindan Chettiar applied for and obtained any patta under the said Act, if there is any provision for such application and for grant of patta, it is for the defendant to come forward to show such a conferment of title, if any. When the defendant claims right only on the basis of the entry made as per Ex.B.2 extract of S.L.R., the burden is on the defendant to explain the Ex.B.2 entries and to establish that he has got title and basis for such an entry. The extract of S.L.R. would not automatically lead to the conclusion that it is followed by a conferment of title in favour of K. Govindan Chettiar. Besides the S.L.R. is not proved in a manner known to law. As a matter of fact, no such pleading was raised in the written statement before the Civil Court, though such a plea was raised before the District Revenue Officer and not before the Sub Collector.

20. The learned Additional Government Pleader (Writs) has produced before us the records concerning the writ petition, and we have gone through the same. The District Revenue Officer has filed a counter affidavit in the writ petition stating in paragraph No.2 as follows:-
" I state that the Village of K. Velangudi was taken over under the

estate Abolition Act 26/48 and S.No.27/5 measuring 1.07 acre was classified as patta in the name of K.Govindan Chettiar subsequently it was transferred in the name of A.P.L. Meyyappa Chettiar."

Admittedly neither the respondents in the writ petition nor the defendant in the suit have produced a document to show when the notification was issued and when the land was classified as patta in the name of Mr.K.Govindan Chettiar. Without holding an enquiry as to the pre-existing right of K.Govindan Chettiar, we are unable to understand how the patta has been given in the name of K.Govindan Chettiar. The case of the plaintiff/petitioner in the writ petition was that while he was holding patta, the same was erroneously and mistakenly changed to the name of K.Govindan Chettiar and on his representation, Ex.A.4 came to be passed. It is only after 22 years the restoration of AP.L.Meyyappan Chettiar's name was sought to be changed. No reason has been given in the impugned order or in the counter affidavit for this inordinate delay. Further, there is absolutely no material whatsoever in the alleged objection petition filed by the defendant/ respondent No.5 dated 01.09.1993 seeking retransfer of the entry in his name. It is only at the stage of the District Revenue Officer, the story of vesting all the lands under the Estate Abolition Act was brought into. Excepting stating so, there is no records referred to about this 1960 settlement. The reason stated in the order passed by the District Revenue Officer are that (i) though the plaintiff claims title on the basis of the sale deed of the year 1929, he has not proved the boundaries of the property; (ii) from 1929 to 1971, the plaintiff/ writ petitioner has not taken steps to get the patta; (iii) the plaintiff/writ petitioner has not objected to the settlement in favour of K.Govindan Chettiar; and (iv) the District Revenue Officer is not able to understand as to why the writ petitioner could not get the consent of K.Govindan Chettiar.

21. The writ petitioner had along with his appeal before the District Revenue Officer, had raised 17 grounds of appeal and enclosed five documents of which two documents referable to 1929 and 1979 sale deeds and the third document is the sketch of the property. The Village Map, which is available with the respondents and which has been marked as Ex.A.24 and the documents Exs.A.1 and A.13 which are available before the District Revenue Officer were not considered at all. There is a total non-application of mind in reference to the title deed and the plan and the Village Map provided for identifying the property. It is the case of the writ petitioner before the District Revenue Officer that K.Govindan Chettiar had not obtained any sale deed or proof of possession of the suit property. In other words, the case of the writ petitioner was that K.Govindan Chettiar has no title or right or interest over the suit property. Overlooking this, the District Revenue Officer proceeded on the basis that in the settlement `A' Register, K.Govindan Chettiar's name is there, that in Ex.A.13, there is interpolation, that the writ petitioner/plaintiff has not proved the identity of the property and he has not got consent from K. Govindan Chettiar, and that no legal heir certificate has been produced, without going into the question as to how K.Govindan Chettiar has got title to the property.

22. From the records produced, we find that the certificate copies of

the documents relied on by the plaintiffs were enclosed as typed set of papers before the District Revenue Officer. We also find Field No.27 Plan of Velangudi Village as a note marked with red ink as 27 /5 denoting the seven cents sold by the defendant to the plaintiff. Another document found in the typed set of papers is the memo issued by the District Revenue Officer dated 13.07.1990, wherein after referring to K.R.Narayanan's application dated 25.06.1990 in reference to the 0.33 cents of land in S.No.27/11, he has directed K.R.Narayanan to resolve the matter by going to the Civil Court. The argument of the learned Counsel appearing for the plai ntiff is that such course has not been followed in this case by the District Revenue Officer. It is also seen that the plaintiff has filed a petition before the District Revenue Officer on 07.06.1994, objecting the appearance of the Advocate K. Usha, on behalf of the respondent K.R.Narayanan, who is said to be the daughter of the District Revenue Officer and sought for transfer of the case to some other District. Though the transfer application was referred to in paragraph 9 of the order of the District Revenue Officer, nothing has been stated as to the allegation contained in the petition. However, Counsel Mr.S.Natarajan appeared for the respondent and not K. Usha.

23. Apart from what is referred to above, there is no records found to sustain the order of the District Revenue Officer to substantiate the claim of the fifth respondent and there is no records found as to the alleged settlement patta made in favour of the fifth respondent. Therefore, the only records available were the documents filed by the plaintiff in this case, but they were not considered by the authorities and no revenue records, which could have formed the basis of the order, were found in the records. For all these reasons, we have no hesitation in holding that the orders of the revenue authorities are illegal and unsustainable in law.

24. The Trial Court, on the basis of Ex.A.1 entry made in favour of K.Govindan Chettiar and in the absence of any explanation as to how it is changed in favour of the plaintiff and on the basis of the orders of the Revenue Divisional Officer and the District Revenue Officer found that the plaintiff has not proved his title. In our view, the learned Subordinate Judge has misdirected and committed a serious error in relying on the orders of the revenue authorities to decide the question of title. Inasmuch as the plaintiff has traced his title through the sale deeds and possession and enjoyment by paying kist to the revenue authorities from 1962 to 1971 and he had taken efforts to correct the entry wrongly made in favour of Mr.K.Govindan Chettiar, successfully in the year 1970, the trial court should have found title in favour of the plaintiff. The learned Subordinate Judge has, on the other hand, relied on the orders of the Revenue Divisional Officer and the District Revenue Officer for the purpose of proving title. It is a well laid down principle of law that payment of kist and records or the entry in the name of patta book are no documents of title and cannot be a substitute of documents of title.

25. In paragraph 25 of the judgement, the trial Court found that no reliance can be granted to patta and the payment of revenue and that will not establish possession. Having held so, the learned Subordinate Judge finds that Ex.A.4 clearly shows that Patta No.191 stands in the name of K. Govindan

Chettiar and therefore, it is not known how the plaintiff had paid kist for the said patta. The plaintiff has not established, according to the learned Subordinate Judge, as to how the patta was transferred as per Ex.A.4. He further confirms the stand of the District Revenue Officer that K. Govindan Chettiar had been given patta after the Estate Abolition Act, and the plaintiff has not proved that after the estate abolition, how he has acquired the right and patta. According to the learned Judge, the said right has to be established under the Estate Abolition Act and that therefore, it follows that it is only K.Govindan Chettiar who is entitled for the right over the property. The learned Judge went on to hold that the plaintiff has unlawfully transferred the settlement patta as per Ex.A.4. We find there are two fatal infirmities in this inconsistent reasoning:-

i) Patta or the entry in the Rent Register is not a document of title. Having been alive to the law, the learned Judge falls into error relying on them only for his conclusion.

ii) No evidence to show that patta was given in a proceeding under the Estate Abolition Act, but a finding is given in para 19 to the effect "as per Estate Abolition Act, patta has been registered in the name of K.Govindan Chettiar".

We will refer to the settled position of law on this subject after considering the question of possession.

POSSESSION

26. The case of the plaintiff is that he had been in possession and enjoyment of the property by raising compound wall, standing trees and constructing a well and that the defendant was trying to interfere with his possession. The defendant has pleaded that K. Govindan Chettiar had put up the compound wall on four sides and constructed two wells and that he had covered the well for the purpose of taking bath and he has also raised trees and the defendant has been in joint enjoyment with his brothers. P.Ws.2 to 4 speak of possession of the plaintiff's side and D.Ws.2 to 4 speak of possession of the defendant' s side. The Commissioner's report and plan and exhibits have got a direct bearing on the possession of the property.

27. The Trial Court has found contradictions in the pleadings and evidence. It is pointed out by the learned Subordinate Judge that while in the pleadings, it is stated that the plaintiff has put up compound wall, well and trees, in the evidence, it is stated that the compound wall was put up by his ancestors. The second contradiction, according to him, is that while P.Ws.2 to 4 have stated that there are standing trees, in the plaint, there is no reference to the standing trees. He has also referred to yet another contradiction that while P.W.2, the gardener has said that all the tr ees are leased out, P.W.3 who has taken the trees on lease, has referred to only certain trees that were taken on lease and that P.W.4 also stated that there are kitchen garden and therefore, there are contradictions.

28. We have carefully considered the pleadings and evidence. Ex.A.1 document of the year 1929 refers to the compound wall on three sides and the building and there is no reference to the trees. The plaint schedule refers to the compound wall, well and trees. In paragraph 12 of the plaint, it is

stated that the plaintiff had been enjoying the property by raising walls, growing trees and constructing well and that the enjoyment is traceable to his ancestors. P.W.1 has stated that he has not put up the compound wall and the said wall has been in existence from his grand-father's period. He has also stated that all these trees were planted by him 35 years before and that he had put up tiles 30 years before. P.W.2 who had been engaged to water the trees, has stated that he is also taking care of the plants and he had been paid salary for his work. He has specified number of trees as 24 mango trees,, 3 coconut trees, one jack-fruit tree, one neem tree and two drumstick, etc. He has stated that all these trees were given on lease at the end of the year as a whole. P.W.3 speaks of taking lease of mango and jack-fruit for the past eleven years. P.W.4 , who is a resident nearby, has stated that the plaintiff is enjoying the land by planting trees and also kitchen garden. While there are in existence a number of trees like, mango, jack-fruit, coconut, palmirah and trees like drumstick, some other trees which were not fruit-bearing, are also there. It will not mean that every tree should be given on lease. The explanation offered by the plaintiff is that only fruit-bearing trees like mango, jack-fruit are given on lease and other available trees like drumstick, kitchen garden are not auctioned. Therefore, the statement of P.W.1 that he has leased out all the trees, is referable only to those fruit-bearing trees and not the plants or neem or palmirah trees and that there is no contradiction between the plaint pleadings and the evidence as we go through Ex.A.1 and description in the plaint schedule read with paragraph 12. We are of the view that the learned Subordinate Judge has made a mountain out of a mole and has given a strained reading of the pleading by his interpretation.

29. The fact that there are three platforms for sitting made up of granite and in one such platform, the name of the plaintiff's mother has been engrossed, is noted and is not disputed. The explanation of the Counsel for the appellant/plaintiff is that one of those three platforms intended to be gifted to a temple, was left in the land of the plaintiff itself all these years. However, it is one of the important piece of evidence to show that the lands were in possession and enjoyment of the plaintiff.

30. The case of the appellant/plaintiff is that they have sought for appointment of the Advocate Commissioner in I.A.No.472 of 1994 which was opposed by the defendant, but ultimately, an Advocate Commissioner was appointed, who has submitted a report and plan Exs.C.1 and C.2. As per the report and plan of the Advocate Commissioner, there are walls on four sides of the property. He described the western side of the property as Raman Chettiar's street and found the main entrance with an iron gate. He has also noted that at the time of the inspection, there were two locks placed over the gate. He has also noted the trees like mango, coconut, jackfruit, neem, palmirah, bruz, Manjanathi, Uzilai, Karuvela spread over through out the suit property. He has noted that, in the north-eastern end of the property, there is a well, that there is a tiled shed with stove, and firewood were stocked, that a big tank with a platform is found, that a bathroom and lavatory which are claimed to be the plaintiff's properties, are found, that there is a cattle shed intended for cows, which was pointed out by the plaintiff as intended for his use. The Commissioner was also informed that the suit

property was 1.07 acres in S.No.27/5, and 7 cents of land in S.No.27/17 was purchased from the defendant. The Commissioner has also noted that the whole extent of southern portion of the property belongs to the plaintiff and that there is a door to enter from the plaintiff's house property and that the said door was kept open. The Commissioner has also noted the statement of the defendant's side.

31. It is well settled proposition of the law that a report of a Commissioner and his plan cannot be the evidence of possession of a particular party. Before the Commissioner, both of them claimed that the properties are

in their respective enjoyment. It is for the Court to consider taking note of the physical features and other documentary and oral evidence for coming to the conclusion that the property is in possession of a particular person.

32. According to the plaintiff, on the date of the inspection, the defendant had over-locked the gate and he came to know of the position only when the Commissioner came for opening the gate. The plaintiff further says that immediately after the inspection of the Commissioner, he had given Police complaint of breaking open of the lock by the defendant. P.W.1 had specifically stated in his chief examination that he had checked the lock in the main gate on 29.12.1994. But, when he went there on 10.00 a.m. on the next day, as requested by the Commissioner, he found the lock missing, instead another lock was placed and that he had told the Commissioner immediately that somebody has changed his lock and some other lock has been placed. The said fact was also evidenced by Ex.C.1 report. P.W.1 has also stated that he has immediately given a complaint evidenced by Exs.A.19 and A.20. The defendant as D.W.1 has stated in his cross examination that there is a lock belonging to the defendant and he denied the suggestion that he has broken open the lock just on the previous night of the inspection of the Commissioner. He has also admitted that the lock is belonging to him. He has also admitted that he has not made any police complaint as to the alleged over-lock.

33. From the above, it is clear that the plaintiff as soon as he came to know that there was a over-lock in the gate when the Commissioner inspected the suit property, has immediately given a police complaint, whereas the defendant did not make any such complaint. From the available evidence and report of the Commissioner, it is seen that the property of the plaintiff forms part of the southern boundary and there is an access from the property of the plaintiff to the suit property. The plaintiff has got his lavatory and bath room and other constructions in the suit property which form part of his house property. Therefore, the claim of the plaintiff that the property is in his effective control and possession and that when it was found the gate over-locked with another lock by the defendant, he has immediately given a police complaint on the same day. It is unlikely that the plaintiff, who sought the appointment of Advocate Commissioner for inspection and identifying the suit property, would have permitted the property being locked up by the defendant. However, we are unable to appreciate the findings of the learned Subordinate Judge that in order to disprove the case of the defendant that he is holding the key, the plaintiff has given a complaint on 30.12.1994 after the Commissioner's inspection, and no inference can be drawn, because a

complaint was given subsequently. He has also concluded that because there was a lock belonging to the defendant on the gate, the property is with the defendant. Such a conclusion, is in our view, illogical and erroneous inference on a flimsy ground.

34. The learned Judge has also given an undue weightage to the evidence of D.W.2, simply because he is a retired Head-Master, whereas P.Ws. are masons-gardener and a lady working with the plaintiff. We have seen that P.W.2 is a gardener, who waters the plant and trees on a salary for the past 15 to 20 years and he gives the consistent clear evidence in reference to the particulars of the trees and how the usufructs are disposed of and at what time he comes to start work, he commenced his work, etc. He denied the suggestion that he has given a false evidence. P.W.3 is a person, who takes the usufructs of the trees on yearly basis for the past 11 years. P.W.4 is a resident in that area for the past 35 years, who speaks of the enjoyment of the plaintiff. He has also removed the lawn and taken the vegetables. We do not find any reason as to why their evidence should be disregarded simply because they are gardeners and nearby resident. D.W.2 admits that he is a family friend of the defendant and he is residing at Karaikudi. The defendant is a patient of D.W.2's father. He claims that he used to visit the place quite often. He further says that his house is at Karaikudi and he was working at Tirupathur. D.W.2 says that he does not know the four boundaries of the suit property, and that having admitted that the suit property is north of the plaintiff's property, does not know whether the defendant has sold one of the properties to the plaintiff. He further says that he had gone out of the place in the year 1956 itself and he does not know whether the property of K.Govindan has been transferred in the name of the defendant. However, he says that he knows that the defendant was raising the garden in the suit property. D.W.3 is also a resident of Kottaiyur and admits that the plaintiff's property is on the south of the suit property. He however says that he does not know whether there are ovens or stoves in the suit property. D.W.4 says that he had looked after the garden and household work of the defendant. He has actively participated in the opening of the lock, when the Commissioner came to the suit property and he also claims that he is the person to look after the suit property. He is a resident of Velangudi Village which is one mile away from Kottaiyur. Even though he says that he is owning an agricultural property, he does not know the survey number. He admits the complaint given by the plaintiff. Curiously, D.W.4 says that the plaintiff cannot open his property to enter the suit property and that there are no stoves in the shed and there is no bath room and that the well is not in working condition and that there is no water in the well. The statement of D.W.4 is clearly incorrect, since he denies the existence of an entry from the plaintiff's house, which is admitted by all the witnesses and not in dispute and also the existence of bath room, stove and well. We find that the witnesses let in on the side of the defendant are not speaking the truth. On the other hand, the plaintiff's witnesses appear to us natural and trustworthy of acceptance. One has to consider the evidence objectively in the light of probabilities to find out the truth and render justice. The conclusion cannot be on the basis of status of witnesses or holding of a lock to a property.

35. In Ramesh Bejoy Sharma v. Pashupati Rai & Ors. (1979 (4) SCC 2

7) Their Lordships have laid down three requisites for possession, they are :
(i) There must be acual or potential physical control
(ii) Physical control is not possession, unless accompanied by intention; and
(iii) the possibility and intention must be visible or evidenced by external signs.

36. In Baleshwar Tewari (dead)_ by Lrs. & Ors. v. Sheo Jatan Tiwary & Ors. (JT 1997 (5) S.C. 635) Their Lordships of the Supreme Court have held that in rural area, creation of records may be a camouflage to defeat just and legal right or claim and interest of the raiyatm the tiller of the soil and that entries in revenue records is the paradise of the patwari and the tiller of the soil is rarely concerned with the same. Their Lordships held that possession, correctly understood, means effective, physical control or occupation. Possession must be visible possibility of exercising physical control over a thing coupled with intention of doing so either against all the world or against all the world except certain persons.

37. Applying the principles to the facts of the case, after careful appraisal of evidence in the case, we find the plaintiff is in actual possession of the suit property. The possibility and intention are visibly open and effectively evidenced by oral and material evidence.

38. It is well settled that a patta or the payment of the revenue is not a document for title. For completion of law on this aspect, we propose to refer to some decisions on this subject.

39. In Nawalshankar Ishwarlal Dave v. State of Gujarat (AIR 1994 SUPREME COURT (DB) 1496) Their Lordships after tracing settled law on this point held that mutation of name in revenue records is not evidence of title, though it may be relevant for the other purposes.

40. A Division Bench of this Court in Kuppammal v. Gopaul (A.I.R. 1 915 Madras 614 (1) (DB)) has held that a certificate issued by the Collector in respect of immovable properties is only evidence of revenue registry and affords no title or security as to ownership.

41. In Kuppuswami Nainar v. The District Revenue Officer (1995 (1) M.L.J. 426), a Division Bench has held that even if the revenue authorities decide the question of title, that will not in any way affect the jurisdiction of the Civil Court, which has to decide the question without reference to the decision of the revenue authorities. In that case, the District Revenue Officer rejected the petition for granting patta holding that the land was an ancestral property and the alleged sale deed executed by the mother of the third respondent was an unregistered deed and it did not convey any title. The District Revenue Officer set aside the order passed by the Assistant Settlement Officer. The Division Bench held that even if the revenue officers in patta proceedings expressed their views on the question of title, such expression of opinion or decision is not conclusive and it is only intended to support their decision for granting patta. Their Lordships observed that ultimately it is the Civil Court which has to adjudicate as to whether the

person claiming patta is the title holder of the land.

42. In Sawarni v. Inder Kaur ((1996) 6 Supreme court Cases 223), the Hon'ble Supreme Court held that mutation of a property in the revenue record does not create or extinguish the title nor has it any presumptive value on title and that it only enables the person in whose favour mutation is ordered to pay the land revenue in question.

43. In Sankalchan Jaychandbhai Patel v. Vithalbhai Jaychandbhai Patel ((1996) 6 Supreme Court Cases 433), Their Lordships of the Supreme Court have held as follows:-
"Mutation entries are only to enable the State to collect revenues from the persons in possession and enjoyment of the property and the right, title and interest as to the property should be established dehors the entries. Entries are only one of the modes of proof of the enjoyment of the property. Mutation entries do not create any title or interest therein."

44. In Arul Migu Viswewaraswami, and Veeraraghava Perumal Temple, Tirupur, v. Venkatachala Gounder (1996 (II) CTC 199) a learned Judge of this Court after referring to a Full judgement of the Division Bench in A.S.No.263 of 1924 dated 12.09.1928, which has been reported in 55 M.L.J. (S.N.) 23 (DB)) held that reliance of municipal extracts and tax receipt cannot prove the title. In the judgement of the Division Bench, it was held that a revenue patta is not necessarily evidence of title, that it is only evidence of the agreement between the Government and the person in whose name the land is registered for purposes of revenue and that so far as the the municipal register is concerned, it is only for the purpose of assessment and notice of assessment is issued "to owner or occupier".

45. In Guruvammal v. Subbiah Naicker (1999 (III) CTC 650), one of us, K.Sampath, J., tracing out the principle of law on this aspect, has held that mutation of entries are done to enable the State to collect revenue from the persons who are in possession of the property and the patta is not document of title. In that case, the following decisions were referred and relied on:- Kuppammal v. Gattipalli Gopaul Chetti and others (AIR 1915 Mad.614 (DB) cited supra, Nageshar Baksh Singh v. Mt. Ganesha (AIR 1920 PC 46), Thakur Nirman Singh and others v. Thakur Lal Rudra Partab Narain Singh and others (AIR 1926 PC 100), Durga Prasad and another v. Chanbshiam Das and others (AIR 1948 PC 210), Bharat Singh and another v. Bhagirathi (1966 (1) SCR 606), Navalshanjar Ishwarlal Dave and another v. State of Gujarat and others (AIR 1994 SC 1496), Sawarni v. Inder Kaur and others (19 96 (6) SCC 223) cited supra, Sankalchan Jayachandhbhai Patel and others v. Vithalbhai Jayachandbhai Patel and others (1996 (6) SCC 433) cited supra, Balwant Singh and another v. Daulat Singh (1997 (7) SCC 1 37), Kuppuswami Nainar v. The District revenue Officer, Thiruvannamalai and others (1995 (1) M.L.J. 426 (DB)) cited supra, Arulmigu Viswewaraswami and Veeraraghava Perumal Temple, Tirupur v. Venkatachala Gounder and another (1996 (II) CTC 199) cited supra.

46. While it is true that patta or the orders passed by the revenue authorities granting patta are not documents of title, but that can certainly prove as one of the piece of evidence of possession of the property. Ex.A.2

receipt from 03.12.1964 onwards till the date of filing of the suit, Ex.A.10, clearly show that the kists were paid by the plaintiff evidencing that he is in possession of the property. Ex.A.4, as seen earlier, is a change of entry of the patta No.191 from K.Govindan Chettiar to A.PL.Meyappan Chettiar dated 05.03.1971. Ex.B.2 is said to be the extract of the rent register in which the name of the registered owner is shown as K.Govindan Chettiar and the property has been described as poromboke. From these two documents, it is argued that K.Govindan Chettiar is the title holder. It can be straight-away stated that both these are only entries made in the rent register as well as in the patta and they are not the documents of title and they would not show that there was a vesting of estate of Velangudi Village and grant of patta in recognition of pre-existing right of K.Govindan Chettiar. There was absolutely no other material whatsoever to substantiate such an extended argument.

47. The defendant though claimed that Velangudi Village was vested with the Government and after re-survey the patta was granted to K. Govindan Chettiar, has not established the same.
48. A Division Bench of this Court in SK.M.Muhammed Mustafa Marakayar v. Udayanachiammal (1968 (1) Mad) 728 (DB)) has held that the scheme of the provisions of the Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948) was that with effect from the date of the notification or the date prescribed therein, the entire estate was transferred to and was vested in the Government, that but this was subject to the provisions providing otherwise, that notwithstanding the vesting of the entire estate, possession of lands for which ryotwari pattas should have to be granted was not to be disturbed unlike the rest of the estate notified and taken over, that Section 3(b) and (d) and Sections 12 to 14 read together showed that the intention of the Legislature was not merely not to disturb the persons in possession of which they were prima facie entitled to ryotwari patta, but also they should, as a matter of right, be entitled to patta on and from the date of the notification and taking over of the estate, that in effect both possession and title of a person who was entitled to a ryotwari patta was saved from the effect of the notification under Section 3(b) and the ownership in such lands continued in the quondam landholder notwithstanding the notification, that the only change, however, brought about was not to the ownership, but to the tenure of the land for which ryotwari patta was granted, and that the issue of patta was in recognition of the title that inhered before the notified date and continued to inhere in the landholder thereafter to the private lands.

49. The document pressed into service by the defendant, Ex.B.2, which described the property as promboke will not support the case of the defendant that his predecessor had title to the property. On the other hand, Ex.A.1, registered sale deed, obtained by the plaintiff for a valuable consideration coupled with the sale deed executed by the defendant along with his brother, i.e., Ex.A.13, would clearly show that the plaintiff had acquired title to the property and that he is entitled to patta assuming that the land has been taken over under the Estate of Abolition Act. In this context, a reference has been made to the judgement of a learned Judge of this Court in Kammavar Sangam v. Mani Janagarajan (1999 (III) CTC 304), where the learned Judge while holding that the document of patta will not prove antecedent title, also

held that when the party claims title through their predecessors to the title, it is for him to prove how he acquired the property and the patta only shows that the revenue records are changed and from this it cannot be inferred that he is the ancestral title holder.

50. Both the revenue authorities below have not decided the title of the parties, but have simply gone on the basis that the property originally stood in the name of K. Govindan Chettiar and therefore, he is the title holder. The trial Court has also committed the grave error in relying on these revenue records assuming that they are correct and valid for finding title and possession in favour of the defendant.

51. The learned Subordinate Judge has found that the suit is not maintainable for failure to implead the necessary parties. The contention of the defendant is that the plaintiff has pleaded that there was partition among the plaintiffs' family and that he had been allotted only 1/4th share and without impleading the necessary party, the suit is not maintainable. The said plea was accepted by the learned Subordinate Judge. This, in our view, is ex facie unsustainable. Further, on the finding of the learned Subordinate Judge himself, the said view is patently erroneous. In paragraph No.18 of the judgement, he has found that as per Ex.A.22, the suit property has been divided. But however, strangely, he has found that the Advocate Commissioner has not found any such division and after considering Ex.A.22, he is of the view that the said document has not been proved to have been given effect to. Having held so, in paragraph 28, the learned Judge says that since the plaintiff has not impleaded the other sharers, the suit is bad for non-impleading of the necessary parties. This view of the learned Subordinate Judge is ex facie illegal and perverse reasoning. There must be consistency in judicial reasoning. To say a suit is not maintainable on the basis of a document found to be not given effect to, is clearly not a proper judicial determination.

52. A learned Judge of this Court in S.A.No.1096 of 1986 dated 13.1 0.1995 has held that though the plaintiff have admitted the rights of the other co-owners in the suit properties, insofar as the defendant is concerned, the case of the plaintiffs in that case was they are trespassers and they have no right in the properties. His Lordship M.Srinivasan, J., as he then was, has held that in such a situation, any one of the co-owners can file a suit as against the alleged trespassers and claim reliefs. The learned Judge followed the judgement of a Division Bench of this Court in Thimmayya v. Sidappa (AIR 1925 Mad 63), wherein the Division Bench has held that one co-owner can sue to eject a trespasser and the suit is not bad for non-joinder provided the plaintiff does not deny the other co-owners right.

53. Another Division Bench of this Court in Syed Ahmed Sahib Shutari vs. The Magnesite Syndicate, Limited (Vol.XXXIX I.L.R. Mad. 501), held that one of several co-owners can maintain an action in ejectment against a trespasser without joining the other co-owners as parties to the action.

54. The defendant who was a party to Ex.A.13 document is estopped from disputing the title of the plaintiff. He not only conveyed seven cents of the land, but also admits in the description of the property that the said seven cents of land is south of their vacant land. It is not open to the defendant having conveyed the property and acknowledging the property of the plaintiff, to deny the truth of what has been stated in Ex.A.13. He is clearly estopped from doing so, under Section 115 of the Indian Evidence Act. In this context, the learned Counsel appearing for the appellant/plaintiff also relied on the judgement of this Court in Irjdayam Ammal v. Salayath Mary (AIR 1973 MADRAS 421) for the proposition that the Court may presume in the light of the execution of the registered sale deed that the presumption of the right is in his favour based on the execution of the sale deed Ex.A.13 and especially in the absence of any other document contrary to the conveyance. The Court has to presume that in the absence of any evidence contra, the evidence which could be and is not produced, would, if produced be, unfavourable to the person who withholds it. The learned Counsel claims the right o n the basis of the registered sale deeds, Ex.A.1 and Ex.A.13, coupled with any other contra evidence on the side of the defendant claiming a right or title over the property. The learned Counsel appearing for the defendant submitted that the plaintiff must succeed on the strength of his own title and that could not be whether the defendant has proved his case or not. In this context, he has also referred to a judgement of the Supreme Court in M.M.B.CATHOLICOS v. M.P. ATHANASIUS (A.I.R. 1954 S.C.526). There cannot be any second view on this well settled law, but in this case, we have seen that the plaintiff has established his case by overwhelming documentary as well as oral evidence. The facts and circumstances of the case lead to the conclusion that the plaintiff has title to the suit property.

55. We have seen from the evidence and records available that in this case, the plaintiff's father and after him, the plaintiff had been and is in physical control coupled with the intention of doing so, satisfying all the requirements of possession both under law and on facts. Therefore, he is entitled to the injunction as prayed for.

56. It is contended on behalf of the defendant that in Ex.A.13 sale deed executed by the defendant and his brother, there are certain corrections and that the document should not be relied upon. The said contention cannot be sustained. It is not in dispute that prior to the registration of the document, the following entries @Mo itfhrp@ at Page No.1 and @j';fs; ,lj;jpw;Fk; bjw;F@ at Page No.2 have been added. The document also at the end of each page refers to such a correction and the registration copy of the sale deed contains the said corrections, showing that prior to the registration, the said corrections were made. Therefore, nothing turns out on the said corrections found in the sale deed so long as these corrections were made prior to the registration of the document and shown and registered with these corrections. On the other hand, the specific inclusion that the conveyed property is south of the property belonging to the plaintiff consistently strengthens the plaintiff's title and recognition of it by the defendant.

57. Before parting with this case, we express our displeasure and

disapproval for the contradictory conclusions of the learned Judge and the revenue authorities. They have failed to follow judicial approach expected of.

58. For all these reasons, the judgement and decree of the trial Court and the impugned orders in the writ petition are set aside. The appeal is allowed. The suit is decreed as prayed for with costs. The Writ Petition is allowed as prayed for with costs. Consequently, C. M.P.No.13465 of 1995 and W.M.P.No.10619 of 1995 are closed.

(P.S.M.,J.)
(K.S.,J.)
23.08.2002
Index : Yes
Internet : Yes
To
1. The Subordinate Judge, Devakottai (with records).

2. The District Collector, Sivagangai, P.M.T. District.

3. District Revenue Officer, Sivagangai,
P.M.T. District.

4. Sub-Collector of Devakottai, Devakottai,
P.M.T. District.

5. Tahsildar, Karaikudi Taluk,
P.M.T. District.

6. The Record Keeper, V.R. Section.

P. SHANMUGAM, J.
AND
K. SAMPATH, J.
Judgement in
A.S.No.309 of 1995 and W.P.No.6579 of 1995
and
C.M.P.No.13465 of 1995 and W.M.P.No.10619 of 1995